

REMARKS

In response to the Restriction Requirement dated April 15, 2004, applicant has elected with traverse Group I, claims 1-16, and Species II, directed to the embodiment of Figure 5, for examination at this time. Applicant has withdrawn claim 13 and canceled claims 17-20 without prejudice to the filing of any divisional, continuation, or continuation-in-part application.

Applicant's traversal of the Restriction Requirement is directed specifically to the Examiner's statement that there is currently no generic claim.

MPEP § 806.04(f) states, "Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species."

35 U.S.C. § 112, fourth paragraph, states, "A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers."

Thus, a dependent claim can never be considered to be part of a different species than an independent claim from which it depends, since a dependent claim incorporates all the limitations of its base claim, and therefore cannot be considered mutually exclusive from that base claim, as required by the MPEP, in order to be restricted to a separate species. Prior to the present amendment, The original claim 1 of the present application was followed by fourteen claims, each either directly dependent or dependent through an intervening claim. At least one of those fourteen claims reads on each one of the five species outlined by the Examiner, respectively. Accordingly, claim 1 cannot be considered to read on any fewer than all of the species without violating the mutual exclusivity requirement of the MPEP.

For example, claim 2 recites a reopenable interlocking seal as shown in Figure 11, and thus reads on Species V. Claim 3 recites a flap coupled to the back panel and extending beyond an edge of the front panel, the flap configured to fold over the front panel and close the first opening, as shown in Figures 3-4C. Thus, claim 3 reads on Species I. Claim 6 recites first and second pressure sensitive adhesive strips positioned adjacent to the unjoined portions of the

edges of the front and back panels, respectively, as depicted in Figures 9 and 10, and thus reads on Species IV. Claim 9 recites a tool pouch defined on four sides by a sealed region and containing a spreading tool, as shown in Figure 5, and thus reads on Species II. Claim 14 recites a stiffener flap defined by an arcuate score line in the front panel adjacent to the first opening of the pouch, the stiffener flap configured to bend sharply inward at the score line to form a stiffened projection. Claim 14 reads on Figures 7 and 8, and thus on Species III.


As has been demonstrated, claim 1 is generic and should be examined with the claims directed to the elected species. Claims 8, 11, and 15 are also generic and should therefore be examined along with claim 1.

While many of the claims previously dependent from claim 1 have been amended to depend from claim 9, the scope of claim 1 remains unchanged, and so remains generic.

Claim 9, which reads on the elected species, has been rewritten in independent form. Claims 2, 3, 6, 12, and 14 have each been amended to depend from claim 9, and are now in condition for examination. Claims 4 and 5 depend from claim 3, claim 7 depends from claim 6, and claim 10 depends from claim 9. Claim 13, which reads on species IV is withdrawn pending allowance of a generic claim. Independent claim 16 is also directed to the embodiment of Species II. Accordingly, all remaining claims are now in condition for examination at this time.

Consideration of the elected claims is now requested.

Respectfully submitted,
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